

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**LBE, Inc. and Local 486, International Brotherhood of Teamsters.** Case 7–CA–52240

January 5, 2010

**DECISION AND ORDER**

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on July 15, 2009, the General Counsel issued the complaint on September 23, 2009, against LBE, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On November 2, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on November 4, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment<sup>1</sup>**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that if an answer was not received by October 7, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Narricot Industries, L.P. v. NLRB*, \_\_\_ F.3d \_\_\_, 2009 WL 4016113 (4th Cir. Nov. 20, 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted \_\_\_ S.Ct. \_\_\_, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213); *Teamsters Local 523 v. NLRB*, \_\_\_ F.3d \_\_\_, 2009 WL 4912300 (10th Cir. Dec. 22, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 8, 2009, notified the Respondent that unless an answer was received by October 21, 2009, a motion for default judgment would be filed.<sup>2</sup>

In the absence of good cause being shown for the failure to file an answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office in Saginaw, Michigan, has been engaged in providing freight pickup and delivery service for DHL Express (USA), Inc. (DHL). During the calendar year 2008, a representative period, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000, and provided services in excess of \$50,000 to DHL, which itself, during the same period of time, derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Michigan directly to points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 486, International Brotherhood of Teamsters, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Tony Lander has held the position of the Respondent's president and has been a super-

<sup>2</sup> The complaint and notice of hearing were sent by certified mail to the Respondent's last known address. The complaint and notice of hearing were returned to the Regional Office with the original envelope marked "Returned to Sender—REFUSED." In addition, a copy of the reminder letter dated October 8, 2009, was sent to the Respondent's last known address. The reminder letter was returned to the Regional Office marked "Returned to Sender—UNABLE TO FORWARD" and "BUSINESS CLOSED." It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn.5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). A returned receipt marked "refused" is sufficient under Board law for the General Counsel to proceed so as not to defeat the purposes of the Act. See also *NLRB v. J & W Drywall, Lather & Plastering Co.*, 19 F.3d 1433 (6th Cir. 1994) (Table) (unpublished opinion), enf. 308 NLRB 517 (1992) [The circuit court enforced the Board's order granting the General Counsel's motion for a default judgment refusing to find an abuse of discretion based on the respondent's "bare denials" that it refused to accept the certified mail sent to it. "The Respondent's bare denial of these allegations fails to rebut the prima facie proof or to create an issue of fact warranting a hearing." *Id.*]

visor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, the following individuals held the positions set forth opposite their names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Dave Herber	Vice-President
Shari Ferruzzi	Human Resource Manager

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and dock employees employed by Respondent located in the DHL Express (USA), Inc. distribution facility located at 8015 Garfield Road, Freeland, Michigan, but excluding all office clerical employees and guards and supervisors as defined in the Act.

Since about 2005, the Union has been the designated exclusive collective-bargaining representative of the unit and has been so recognized by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective from January 1, 2007, through January 1, 2010.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About July 8, 2009, the Union, by e-mail, requested that the Respondent provide it with a complete copy, including financial details set forth therein, of the "contract employee retention program" (CERP), a document between DHL and the Respondent dealing with the shut-down of the Respondent's operation.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about July 8, 2009, the Respondent has failed and refused to provide to the Union the information requested.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested about July 8, 2009.

#### ORDER

The National Labor Relations Board orders that the Respondent, LBE, Inc., Saginaw, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 486, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the following appropriate unit, by failing and refusing to provide the Union with information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit employees. The unit is:

All full-time and regular part-time drivers and dock employees employed by Respondent located in the DHL Express (USA), Inc. distribution facility located at 8015 Garfield Road, Freeland, Michigan, but excluding all office clerical employees and guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with a complete copy of the "contract employee retention program" (CERP), including financial details set forth therein, as requested about July 8, 2009.

(b) Within 14 days after service by the Region, post at its facility in Saginaw, Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized repre-

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sentative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 8, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 5, 2010

---

Wilma B. Liebman, Chairman

---

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 486, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the following appropriate unit, by failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees. The unit is:

All full-time and regular part-time drivers and dock employees employed by us located in the DHL Express (USA), Inc. distribution facility located at 8015 Garfield Road, Freeland, Michigan, but excluding all office clerical employees and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with a complete copy of the "contract employee retention program" (CERP), including financial details set forth therein, as requested about July 8, 2009.

LBE, INC.